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7 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

8 ROBIN DIRK HORDON, an individual,

9 Plaintiff,

10 v.

11 KITSAP COUNTY SHERIFF'S  
12 DEPARTMENT, a municipal corporation,  
13 DEPUTY MIKE MERRILL, an individual,  
14 DEPUTY ANDREW AMAN, an individual,  
15 DEPUTY BRAD TROUT, an individual,  
16 DEPUTY TONY GRAHAM, an individual,  
17 DEPUTY BENJAMIN TEETS, an individual,  
18 DEPUTY TIMOTHY YOUNG, an individual,  
19 DEPUTY JUSTIN CHILDS, an individual,  
20 PORT OF KINGSTON, a municipal  
corporation, HARBORMASTER RAYMOND  
CARPENTER, an individual, EXECUTIVE  
DIRECTOR GREG ENGLIN, an individual,  
and MARINA LEAD AUSTIN GOFF, an  
individual,

Defendants.

No.

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF

21 **I. INTRODUCTION**

22 1.1 This case arises out of the unlawful and unconstitutional arrest of a private citizen  
23 exercising his First Amendment rights to free speech. Responding to a call from officials from  
24 the Port of Kingston, three Kitsap County Sheriff's Deputies, Defendants Mike Merrill, Andrew  
25 Aman, and Brad Trout, arrested Plaintiff Robin Hordon, an activist who was engaged in political  
26 free speech activities in "Mike Wallace Park," a quintessential public forum, during the Port's  
27

1 Fourth of July Celebration on July 4, 2019. The Deputies did so under standard operating  
2 procedure and policy of Kitsap County, on the direction and advice of Deputy Prosecuting  
3 Attorney John Madden, and at the behest of the Port of Kingston Defendants for violation of  
4 their “sign policy,” which purports to disallow any sign on Port property without prior  
5 permission of the Harbormaster.

6 1.2 Also in accordance with the policies of Kitsap County, Deputy Trout then issued a  
7 “Criminal Trespass Warning” that purported to ban Mr. Hordon from the public park and other  
8 Port property “FOREVER/NO EXPIRATION.” The Trespass Warning does not provide notice  
9 of how this permanent ban can be appealed or challenged, and in fact there is no opportunity to  
10 be heard for individuals subjected to such Trespass Warnings to have such bans removed. Thus,  
11 such Trespass Warnings are issued under Kitsap County policy and authority at the unbridled  
12 discretion of an individual Sheriff’s Deputy.

13 1.3 After the Deputies booked Mr. Hordon and forced him to spend a night in the  
14 Kitsap County Jail, Mr. Hordon hired a private attorney to defend him against criminal charges.  
15 A judge released Mr. Hordon the next day on his own recognizance.

16 1.4 Several days later, on July 18, 2019, Mr. Hordon returned to Mike Wallace Park  
17 with his attorney for purposes of preparing his criminal defense. Defendant Marina Lead Austin  
18 Goff called 9-1-1 to report a criminal trespass. Defendant Deputy Teets responded and spoke  
19 with Mr. Goff and Defendants Harbormaster Raymond Carpenter and Executive Director Greg  
20 Englin, who confirmed that they did not want Mr. Hordon in Mike Wallace Park. But by the  
21 time Deputy Teets arrived, Mr. Hordon and his lawyer had left.

22 1.5 Three days later, on July 21, 2019, Mr. Hordon returned to Mike Wallace Park to  
23 take some pictures for purposes of preparing his criminal defense. Again Marina Lead Austin  
24 Goff called 9-1-1, and again Deputy Teets responded to the park, this time with Defendant  
25 Deputy Justin Childs. By the time they arrived, Mr. Hordon was no longer in the park, but  
26 Deputy Teets and Deputy Childs found him a few blocks away and arrested Mr. Hordon for  
27 “criminal trespass,” assisted by Defendant Deputy Timothy Young. The Deputies’ sole ground

1 for arresting Mr. Hordon was the prior Criminal Trespass Warning issued by Deputy Trout on  
2 July 4, 2019.

3 1.6 Kitsap County then prosecuted Mr. Hordon for two counts of criminal trespass,  
4 and the Sheriff has confirmed its effect in writing. Mr. Hordon has incurred legal fees in  
5 preparing his defense. His defense team filed a Motion to Dismiss on Monday, January 20,  
6 2020, arguing that Mr. Hordon was arrested in violation of the First Amendment. A few days  
7 later, prior to filing a response to the Motion, a Kitsap County Deputy Prosecuting Attorney  
8 voluntarily dismissed the case without prejudice. Kitsap County could decide to prosecute Mr.  
9 Hordon for those same charges any time during the applicable statute of limitations. So not only  
10 is Mr. Hordon banned from Mike Wallace Park “FOREVER,” he lives in fear of being  
11 prosecuted any day, at the whim of the Kitsap County Prosecuting Attorney.

12 1.7 The acts described above and in greater detail below violate the First, Fourth, and  
13 Fourteenth Amendments to the United States Constitution. All defendants have violated and  
14 suppressed Mr. Hordon’s First Amendment right to free speech.

## 15 **II. PARTIES**

16 2.1 Plaintiff ROBIN DIRK HORDON is an individual residing in Kitsap County in  
17 the State of Washington.

18 2.2 Defendant KITSAP COUNTY SHERIFF’S DEPARTMENT is a subdivision of  
19 Kitsap County, a county within the State of Washington and a municipal corporation located in  
20 the Western District of Washington.

21 2.3 Defendant DEPUTY MIKE MERRILL is an individual who at all times relevant  
22 was a Kitsap County Sheriff’s Deputy acting within the scope of his employment and under  
23 color of state law.

24 2.4 Defendant DEPUTY ANDREW AMAN is an individual who at all times relevant  
25 was a Kitsap County Sheriff’s Deputy acting within the scope of his employment and under  
26 color of state law.  
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1           2.5     Defendant DEPUTY BRAD TROUT is an individual who at all times relevant  
2 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under  
3 color of state law.

4           2.6     Defendant DEPUTY TONY GRAHAM is an individual who at all times relevant  
5 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under  
6 color of state law.

7           2.7     Defendant DEPUTY BENJAMIN TEETS is an individual who at all times  
8 relevant was a Kitsap County Sheriff's Deputy acting within the scope of his employment and  
9 under color of state law.

10          2.8     Defendant DEPUTY TIMOTHY YOUNG is an individual who at all times  
11 relevant was a Kitsap County Sheriff's Deputy acting within the scope of his employment and  
12 under color of state law.

13          2.9     Defendant DEPUTY JUSTIN CHILDS is an individual who at all times relevant  
14 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under  
15 color of state law.

16          2.10    Defendant PORT OF KINGSTON is a municipal corporation formed under the  
17 laws of the State of Washington. This Defendant is responsible for port operations and  
18 management of public lands, including public parks, in Kingston, Washington, a town located in  
19 unincorporated Kitsap County within the Western District of Washington. Sheriff Gary Simpson  
20 is the elected Sheriff of Kitsap County. As such, Sheriff Simpson is a policymaker of Kitsap  
21 County with respect to the County's "Criminal Trespass Warning" policies and program.

22          2.11    Defendant HARBORMASTER RAYMOND CARPENTER is an individual who  
23 at all times relevant was the Harbormaster of the Port of Kingston acting within the scope of his  
24 employment and under color of state law.

25          2.12    Defendant EXECUTIVE DIRECTOR GREG ENGLIN is an individual who at all  
26 times relevant was the Executive Director of the Port of Kingston acting within the scope of his  
27 employment and under color of state law.

1           2.13 Defendant MARINA LEAD AUSTIN GOFF is an individual who at all times  
2 relevant was the “Marina Lead” of the Port of Kingston acting within the scope of his  
3 employment and under color of state law.

### 4                                   **III.   JURISDICTION AND VENUE**

5           3.1 This Court has jurisdiction pursuant to 42 U.S.C. § 1983, as well as 28 U.S.C. §§  
6 1331 and 1343.

7           3.2 Venue is appropriate in the Western District of Washington pursuant to 28 U.S.C.  
8 § 1391 because at least some of the Defendants reside in this judicial district and because the  
9 events and omissions giving rise to the claims alleged here occurred within the Western District  
10 of Washington.

### 11                                   **IV.   FACTUAL ALLEGATIONS**

12           4.1 The Port of Kingston is a “Port District” located in Kingston, Washington, an  
13 unincorporated community located in Kitsap County. A “Port District” is a municipal  
14 corporation created by State law “for the purposes of acquisition, construction, maintenance,  
15 operation, development and regulation within the district of harbor improvements, rail or motor  
16 vehicle transfer and terminal facilities, water transfer and terminal facilities, air transfer and  
17 terminal facilities, or any combination of such transfer and terminal facilities, and other  
18 commercial transportation, transfer, handling, storage and terminal facilities, and industrial  
19 improvements.” RCW 53.04.010(1).

20           4.2 Port Districts are fundamentally public entities voted into being by an election of  
21 the people who live in the district. RCW 53.04.020. They are vested with governmental  
22 authority with the power to, among other things, acquire property by purchase or condemnation  
23 (RCW 53.08.010), raise revenues through bonds or special assessments (RCW 53.08.050),  
24 operate moorage facilities (RCW 53.08.310), establish rates and charges (RCW 53.08.070), and  
25 promulgate “regulations for the use by tenants, agents, servants, licensees, invitees, suppliers,  
26 passengers, customers, shippers, business visitors, and members of the general public of any  
27 properties or facilities owned or operated by it,” (RCW 53.08.220). Port Districts are governed

1 by Port Commissioners, who are publicly elected officials. RCW 53.12.

2 4.3 The Port of Kingston is currently one of 12 Port Districts in the State of  
3 Washington, encompassing 17 square miles of land at the northeastern end of the Kitsap  
4 Peninsula. The Port leases a significant portion of this land to the Washington State Ferry  
5 System to operate a car and passenger ferry between Kingston and Edmonds.

6 4.4 Near the ferry dock exists “Mike Wallace Park,” a public park created in about  
7 1997 when the Port converted an old boatyard and repair facility into a park with public  
8 restrooms, picnic tables, and a covered stage. According to the Port’s Comprehensive Plan of  
9 Harbor Improvements, Mike Wallace Park is “home to most of Kingston’s large, outdoor  
10 community events, including the Farmers Market, Concerts in the Cove, the Fourth of July  
11 Celebration in the summer, and Kingston Cove Christmas.”

12 4.5 The Port of Kingston has a set of published “Rules and Regulations,” which are  
13 available on its website. [https://portofkingston.org/wp-content/uploads/2019/02/Rules-and-](https://portofkingston.org/wp-content/uploads/2019/02/Rules-and-Regulations-FINAL-updated-Nov.-28-2018.pdf)  
14 [Regulations-FINAL-updated-Nov.-28-2018.pdf](https://portofkingston.org/wp-content/uploads/2019/02/Rules-and-Regulations-FINAL-updated-Nov.-28-2018.pdf) Those Rules and Regulations purport to govern  
15 all manner of conduct on “Port property” and at “Port facilities,” including the “post[ing]” of  
16 signs. In that regard, the Rules state that “Signs may be posted in designated Port areas only  
17 after receiving the Harbormaster’s approval.” What constitutes a “sign” or a “post[ing]” is not  
18 defined, and there are no criteria by which the Harbormaster considers whether such a posting  
19 may be approved. That approval is entirely within the discretion of the Harbormaster. The  
20 Port’s Rules and Regulations do not otherwise mention or directly govern free speech activities,  
21 demonstrations, gatherings, or protests.

22 4.6 The “Kingston 4th of July Celebration” takes place in Mike Wallace Park each  
23 year on July 4, touting itself as the “longest continuously running 4th of July celebration West of  
24 the Mississippi.” The Celebration is planned and operated by the “Kingston Fourth of July  
25 Celebration” corporation, a Washington non-profit organization. The Celebration features a  
26 parade, a “fun zone” for kids, a music festival, a fun run, and evening fireworks. The  
27 Celebration occupies a large area of Kingston, including Mike Wallace Park and the area around

1 the Kingston Village Green Community Center. It is open to the public and does not require an  
2 entrance fee.

3 4.7 Plaintiff Robin Hordon is a life-long peaceful civil activist. In 2001-2002, while  
4 living in Reno, Nevada, Mr. Hordon participated in the Reno Anti War Coalition (RAWC) where  
5 he developed the concept of “Civil Informationing,” which sought to remedy some of the  
6 weaknesses of “protests” and marches. Civil Informationing involves public display of peaceful  
7 and thought-provoking messages with the goal of engaging members of the public in civil  
8 discourse about discrete topics. Mr. Hordon’s displays are typically free-standing signs with a  
9 base, and measure between 5-8 feet high and 2-3 feet wide, with some signs attached together for  
10 a total width of 5-10 feet. His displays have typically focused on the topics of women’s rights,  
11 Native American rights and values, healthcare as a human right, environmental preservation and  
12 conservation, anti-war, voting and democracy, and the expansion of democratic socialism.

13 4.8 Mr. Hordon has practiced Civil Informationing in cities throughout the country  
14 and has done so all around the Puget Sound region for over a decade, including over 40 times at  
15 Mike Wallace Park in Kingston. Over the years, Mr. Hordon has found this method of activism  
16 to be both effective and rewarding, as it builds bridges and provokes dialogue rather than  
17 fomenting conflict. To be effective, Mr. Hordon seeks out public events and gatherings of people  
18 who are on their own time, such as at parades, holiday events, fairs, or musical shows.

19 4.9 In that vein, Mr. Hordon sought to engage in Civil Informationing on July 4,  
20 2019, at Kingston’s annual Fourth of July Celebration event. As he had done in prior years, he  
21 displayed five large display signs along the parade route that were designed to provoke thought  
22 and civil discourse. This day, Mr. Hordon had chosen signs that said “Green Peace – Yes to  
23 Both,” “Save Earth,” “Elect Matrilineal Governances,” and “VOTE – Save Democracy.”

24 4.10 That afternoon, after the parade, Mr. Hordon moved his displays to Mike Wallace  
25 Park, where the crowds from the parade route and other events had migrated to listen to music  
26 and wait for the evening’s fireworks display. He transported them in his van and parked near the  
27 stage while he unloaded three of them.

1           4.11   As he was setting up the display signs off to the side of the stage, he was  
2 approached by Defendants Harbormaster Raymond Carpenter and Marina Lead Austin Goff,  
3 who told him to remove the display.

4           4.12   No park visitors or members of the public had complained about the display signs.  
5 The signs were not blocking the view of the stage and were not interfering with pedestrian  
6 traffic.

7           4.13   Harbormaster Carpenter showed him the “Signs” Rule that purported to give him,  
8 the Harbormaster, the discretion to decide what signs he would approve. Mr. Hordon refused to  
9 remove the signs.

10          4.14   Harbormaster Carpenter accused Mr. Hordon of using profanity and smelling of  
11 alcohol. But, Harbormaster Carpenter did not tell Mr. Hordon to stop using profanity or to stop  
12 smelling like alcohol; rather, he was concerned with Mr. Hordon’s signs.

13          4.15   Rather than simply allow Mr. Hordon to carry on peacefully displaying his signs  
14 and engaging in civil discourse on matters of public concern, Harbormaster Carpenter decided to  
15 call the police to forcibly remove Mr. Hordon and his signs from Mike Wallace Park.

16          4.16   At about 5:25 pm, Defendants Deputy Merrill and Deputy Trout arrived at Mike  
17 Wallace Park and spoke with Defendants Harbormaster Carpenter and Marina Lead Austin Goff.  
18 The two Port officials showed the Deputies the Rule that required prior approval of the  
19 Harbormaster prior to “posting” signs in the park.

20          4.17   With this Rule in hand, the Deputies approached Mr. Hordon and told him that the  
21 Port officials were requiring him to remove his display signs. The Deputies showed him the  
22 Rule. Mr. Hordon responded in a loud voice because he wanted witnesses to the conversation  
23 with the police, firmly refusing to remove his display signs and telling the police that he had a  
24 legal right to engage in speech and display his signs and banner in a public forum.

25          4.18   Defendant Deputy Merrill claimed to have then consulted with Kitsap County  
26 Deputy Prosecuting Attorney John Madden. Deputy Merrill also claimed that Mr. Madden  
27 advised him that the police did have the “authority to ask Hordon to remove his signs,” and that



1 “Obstruction” would be the “best charge” if Deputy Merrill decided to arrest Mr. Hordon for  
2 failing to do so.

3 4.19 Defendant Deputy Tony Graham arrived on the scene at about this time,  
4 participated in the subsequent events, and failed to prevent constitutional harms.

5 4.20 Armed with this County proclaimed policy statement, Deputy Merrill informed  
6 Mr. Hordon that he could either move his signs to an area acceptable to the Harbormaster or  
7 remove the signs from the park entirely, and if he refused to do one of these two things, the  
8 police would arrest him for “Obstruction.” More than once, Mr. Hordon asked what “arrested  
9 for obstruction” meant, as he wanted to know whether he was being accused of obstructing a  
10 police officer, or obstructing pedestrian traffic. He was doing neither, but Deputy Merrill did not  
11 clarify.

12 4.21 Mr. Hordon did not want to be relegated to a less visible part of the park and  
13 believed he had the right to be exactly where he was. So, he refused to either move or remove  
14 his signs.

15 4.22 Shortly after 6 pm, the Deputies arrested Mr. Hordon based solely on his refusal  
16 to remove his signs. They placed him in handcuffs and escorted him to Defendant Deputy  
17 Trout’s patrol vehicle for transport to the jail. They searched Mr. Hordon’s person and advised  
18 him of his Fifth and Sixth Amendment rights, the so-called “Miranda rights.” Defendant Deputy  
19 Trout then drove Mr. Hordon to the Kitsap County jail and booked him for “Obstruction,” now  
20 making clear that the reason for arrest was obstruction of a police officer, and setting bail at  
21 \$50,000.

22 4.23 For the first time in his life, at age 71, Mr. Hordon spent a night in jail. The  
23 experience was unpleasant, and Mr. Hordon suffered emotional trauma and distress from the  
24 experience. Kitsap County then pressed Trespass charges against Mr. Hordon, who was forced  
25 to hire a criminal defense attorney to defend him. He was arraigned the next day and released on  
26 his own recognizance.

27 4.24 The same day of the arrest, at “1900” hours (7 pm), Officer Trout issued a

1 “Criminal Trespass Warning” that purported to ban Mr. Hordon from entering Mike Wallace  
2 Park and other Port property “FOREVER/NO EXPIRATION” for the stated reasons of “public  
3 intoxication,” “disturbing the peace,” and “threatening Port of Kingston employees.” *See*  
4 Exhibit 1, attached.

5 4.25 The next day, on July 5, 2019, Mr. Hordon was arraigned. The Kitsap County  
6 Deputy Prosecuting Attorney went even farther than the Criminal Trespass Warning and asked  
7 the Court to exclude Mr. Hordon from *all Port property* (not just Mike Wallace Park) as a  
8 condition of release, but the District Court Judge denied that request.

9 4.26 The Criminal Trespass Warning does not state that the owner of the property, the  
10 Port of Kingston, had excluded Mr. Hordon from the property, though that was Officer Merrill’s  
11 justification for arresting Mr. Hordon. And although the stated reasons for the Criminal Trespass  
12 Warning were public intoxication, disturbing the peace, and threatening Port of Kingston  
13 employees, these were not the Port’s reasons for calling the police to have Mr. Hordon removed,  
14 and are therefore mere pretext. The sole reason for calling the police and having Mr. Hordon  
15 removed from the public park was his display of signs that had not been approved by the  
16 Harbormaster, and of which he disapproved.

17 4.27 The Criminal Trespass Warning warned that if Mr. Hordon should ever return to  
18 Mike Wallace Park at any time “for the time period listed above” (which was “FOREVER”), the  
19 police could arrest him and he would be prosecuted for “Trespass 1 RCW 9A.52.070 (gross  
20 misdemeanor) or Trespass 2 RCW 9A.52.080 (misdemeanor).”

21 4.28 The Criminal Trespass Warning is a standard Kitsap County form created under  
22 the authority of, and pursuant to the official policies of, Kitsap County. The Kitsap County  
23 Sheriff’s Office sent a copy of the Criminal Trespass Warning in this case to the Kitsap County  
24 Prosecuting Attorney’s office, which received it on July 6, 2019.

25 4.29 The Criminal Trespass Warning form does not provide any information about or  
26 right to an appeal. Police can simply order a person removed and banned from a particular  
27 place—in this case a public park—for all eternity and that person has no ability to challenge that

1 police order.

2 4.30 Even though the stated reasons for an exclusion order can be crimes (here, “public  
3 intoxication” and “disturbing the peace”), the police issue these orders before initiation of a  
4 criminal prosecution and without a criminal conviction.

5 4.31 Kitsap County’s Criminal Trespass Warnings are entirely extra-judicial. No  
6 judicial officer ever reviews them to see if they are factually accurate or legally justified.

7 4.32 Because Kitsap County’s Criminal Trespass Warnings banning people from  
8 places, including public parks, are issued prior to criminal conviction, without any opportunity to  
9 challenge or appeal them, and without approval or oversight by any court, Kitsap County’s entire  
10 Criminal Trespass Warning system is unconstitutional and on its face violates the Fourteenth  
11 Amendment’s guarantees of due process of law.

12 4.33 To this day, Mr. Hordon is excluded from Mike Wallace Park under fear and  
13 penalty of arrest and prosecution. This constitutes an ongoing constitutional violation and harm  
14 for which Mr. Hordon has no adequate remedy at law, and he is and will continue to be  
15 prevented from entering that public park, let alone from engaging in the First Amendment-  
16 protected free speech activities for which he was banned.

17 4.34 Mr. Hordon’s fear of arrest and prosecution are well-founded. Two weeks later,  
18 on July 18, 2019, Mr. Hordon returned to Mike Wallace Park with his criminal defense attorney  
19 to prepare his defense. Defendant Marina Lead Austin Goff called 9-1-1 to report a criminal  
20 trespass based on the Criminal Trespass Warning. Defendant Deputy Teets responded and spoke  
21 with Mr. Goff and Defendants Harbormaster Raymond Carpenter and Executive Director Greg  
22 Englin, who confirmed that they did not want Mr. Hordon in Mike Wallace Park and wanted him  
23 arrested based on the Criminal Trespass Warning. But by the time Deputy Teets arrived, Mr.  
24 Hordon and his lawyer had left.

25 4.35 Three days later, on July 21, 2019, Mr. Hordon returned to Mike Wallace Park to  
26 take some pictures for purposes of preparing his criminal defense. Again, Defendant Marina  
27 Lead Austin Goff called 9-1-1, and again Deputy Teets responded to the park, this time with

1 Defendant Deputy Justin Childs. By the time they arrived, Mr. Hordon had left the park. But  
2 Deputy Teets and Deputy Childs found him a few blocks away and arrested him for “criminal  
3 trespass,” assisted by Defendant Deputy Timothy Young. The Deputies’ sole ground for  
4 arresting Mr. Hordon was the prior Criminal Trespass Warning issued by Deputy Trout on July  
5 4, 2019, which had been initiated and motivated by a desire to prohibit Mr. Hordon from  
6 engaging in free speech activities.

7 4.36 For the second time in his life, Mr. Hordon spent a night in jail. The experience  
8 was unpleasant, and Mr. Hordon suffered emotional trauma and distress from the experience.

9 4.37 Kitsap County then prosecuted Mr. Hordon for two counts of criminal trespass.  
10 Mr. Hordon incurred legal fees in preparing his defense.

11 4.38 On November 26, 2019, Mr. Hordon delivered a letter to Sheriff Gary Simpson,  
12 the elected Sheriff and a policymaker for the Sheriff’s office and Kitsap County with respect to  
13 the “Criminal Trespass Warning” policy and program. Mr. Hordon explained that the Criminal  
14 Trespass Warning was violating his rights to access public property, and asked Kitsap County  
15 not to arrest him when accessing these areas.

16 4.39 On December 2, 2019, Sheriff Gary Simpson responded in a letter, stating:

17 The Port of Kingston has lawfully restricted your access to Port property, property  
18 you have continued to access illegally. Therefore, deputies have the legal  
19 authority to arrest you on Port and/or State managed properties.

20 You have been lawfully trespassed from Port of Kingston properties is indicated  
21 on the Criminal Trespass Warning issued to you on July 4, 2019. You refused to  
22 sign the document issued to you and have provided me with a copy for reference.  
23 This suggests you have notice of the trespass warning yet have elected to violate  
24 this order by continuing to access Port property, which includes the parking lot,  
25 driveways through the parking lot, the Port Office and the Mike Wallace Park. . . .  
26 Each time you access these properties you are committing the crime of trespass.

27 \* \* \*

I am ordering you to cease and desist these criminal activities or you will be  
subject to arrest for the criminal act of trespass upon the Port of Kingston  
properties.

1 If you have further clarification or need legal advice on this matter, I suggest you  
2 seek legal counsel.

3 4.40 The Sheriff's December 2, 2019 letter is a statement of policy, practice or custom  
4 of Kitsap County.

5 4.41 The Sheriff's December 2, 2019 letter constitutes ratification of the Deputies'  
6 actions, and shows that they acted pursuant to County policy, practice or custom, and that  
7 County policy, practice or custom was the moving force behind the constitutional violations by  
8 the Deputies.

9 4.42 In the criminal matter, Mr. Hordon's criminal defense team filed a Motion to  
10 Dismiss on Monday, January 20, 2020, arguing that the Deputies arrested Mr. Hordon on both  
11 occasions in violation of the First Amendment.

12 4.43 A few days later, without filing any response to the Motion, the Kitsap County  
13 Deputy Prosecuting Attorney voluntarily dismissed the case without prejudice. Because the  
14 dismissal was without prejudice, Kitsap County could decide to prosecute Mr. Hordon for those  
15 same charges any time during the applicable statute of limitations. So not only is Mr. Hordon  
16 banned from Mike Wallace Park "FOREVER" on fear and penalty of arrest, he lives in fear of  
17 being prosecuted any day, at the whim of the Kitsap County Prosecuting Attorney.

## 18 **V. INJUNCTION ALLEGATIONS**

19 5.1 The Port of Kingston's policy regarding signs states that "Signs may be posted in  
20 designated Port areas only after receiving the Harbormaster's approval." Vesting a government  
21 official with unguided discretion to approve or disapprove of free speech messages and activities  
22 constitutes a prior restraint on free speech and is presumptively unconstitutional. Both on its  
23 face and as applied in this case, the Port of Kingston's signs policy violates the First  
24 Amendment.

25 5.2 Plaintiff Robin Hordon's rights to free speech have been and continue to be  
26 violated by the Port of Kingston. Such harm is irreparable, and Mr. Hordon has no adequate  
27 remedy at law. Mr. Hordon therefore seeks a court order enjoining enforcement of the present

1 policy. Because the policy itself deters people from displaying signs and exercising their First  
2 Amendment rights to free speech, Mr. Hordon also seeks an order requiring removal or  
3 amendment of the current policy to conform with the US Constitution.

4 5.3 Kitsap County's "Criminal Trespass Warning" policy and program empowers  
5 individual Sheriff's Deputies the power to exclude any person from any place or property,  
6 including public parks, for any length of time, including "FOREVER," for any stated reason,  
7 including alleged criminal activity. These bans are carried out without any judicial oversight or  
8 approval. The Warning form itself does not provide notice to the excluded person of any right or  
9 procedure to appeal the exclusion order, and no appellate or review process in fact exists. As  
10 such, Kitsap County's "Criminal Trespass Warning" policy and program violate the Fourteenth  
11 Amendment's guarantee of due process of law, both substantively and procedurally.

12 5.4 Mr. Hordon seeks an order enjoining enforcement of the Criminal Trespass  
13 Warning issued by Deputy Trout that purports to exclude him from Mike Wallace Park in  
14 Kingston, Washington. Because the policy and program is also procedurally unconstitutional in  
15 every case because of its failure to provide any mechanism of appeal or opportunity to be heard,  
16 Mr. Hordon also seeks an order mandating removal or amendment of Kitsap County's Criminal  
17 Trespass Warning policy and program.

## 18 VI. CLAIMS

### 19 FIRST CAUSE OF ACTION

#### 20 VIOLATIONS OF THE FIRST AMENDMENT

21 6.1 This cause of action is brought against all Defendants. The facts alleged above  
22 constitute violations of Mr. Hordon's First Amendment Right to free speech. This cause of  
23 action is brought under 42 U.S.C. Section 1983 and the First Amendment to the United States  
24 Constitution.

### 25 SECOND CAUSE OF ACTION

#### 26 VIOLATIONS OF THE FOURTH AMENDMENT

27 6.2 This cause of action is brought against all seven individual Sheriff's Deputy

1 Defendants and Kitsap County. Each of the individual defendants were involved in and failed to  
2 prevent the unlawful and unconstitutional arrest of Mr. Hordon without probable cause to believe  
3 he had committed any crime. The arrests were performed pursuant to Kitsap County official  
4 policy as demonstrated by the Sheriff's letter ratifying the officers' conduct and warning Plaintiff  
5 not to enter Port property, including Mike Wallace Park, upon penalty of arrest and prosecution.  
6 The facts alleged above constitute violations of Mr. Hordon's Fourth Amendment Right to be  
7 free from unreasonable seizure without a warrant supported by probable cause. This cause of  
8 action is brought under 42 U.S.C. Section 1983 and the Fourth Amendment to the United States  
9 Constitution.

### 10 **THIRD CAUSE OF ACTION**

#### 11 **VIOLATIONS OF THE FOURTEENTH AMENDMENT**

12 6.3 This cause of action is brought only against Defendant Kitsap County for its  
13 "Criminal Trespass Warning" policy and program. The facts alleged above constitute violations  
14 of Mr. Hordon's Fourteenth Amendment Right due process of law prior to deprivation of liberty  
15 and property. Indeed, Kitsap County violates the due process rights of any person subjected to  
16 its Criminal Trespass Warning policy and program. This cause of action is brought under 42  
17 U.S.C. Section 1983 and the Fourteenth Amendment to the United States Constitution.

### 18 **VII. REQUEST FOR RELIEF**

19 WHEREFORE, Plaintiff requests relief against Defendants as follows:

20 7.1 An order enjoining the Port of Kingston and its agents from enforcing its "Signs"  
21 policy requiring Harbormaster approval to display signs on Port property against Mr. Hordon or  
22 others, including in public parks like Mike Wallace Park. The Court should also require the Port  
23 of Kingston remove or amend the sign policy to comply with the Constitution so that Mr.  
24 Hordon and others are not deterred from exercising their free speech rights.

25 7.2 Prospective and Mandatory Injunctive relief ordering Kitsap County to remove  
26 the "Criminal Trespass Warning" against Mr. Hordon and enjoining the County and its agents  
27 from enforcing that Trespass Warning by arresting Plaintiff should he choose to enter the public

1 park known as "Mike Wallace Park."

2 7.3 Prospective and Mandatory Injunctive relief ordering Kitsap County to amend its  
3 "Criminal Trespass Warning" policy and form to provide procedural due process protections to  
4 anyone subjected to this policy, including but not limited to notice and opportunity to be heard  
5 regarding the legality and propriety of any police exclusion order, and to comply with the  
6 requirements of the Fourteenth Amendment to the United States Constitution.

7 7.4 Compensatory damages for violations of Plaintiff's Constitutional rights.

8 7.5 Compensatory damages for emotional distress and mental harm, including but not  
9 limited to dignitary and reputational harm caused by the arrest and incarceration for two nights in  
10 jail for the first time in Plaintiff's life.

11 7.6 Punitive damages from the individual Defendants on Plaintiff's claims under 42  
12 U.S.C. §1983.

13 7.7 Costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988 and to the  
14 extent otherwise permitted by law.

15 7.8 Leave to amend the pleadings to confirm to the evidence at trial; and

16 7.9 Such other relief as may be just and equitable.

17 DATED this 18th day of May, 2020.

18 MacDONALD HOAGUE & BAYLESS

19 

20  
21 By: \_\_\_\_\_  
22 Joe Shaeffer, WSBA #33273  
[joe@mhb.com](mailto:joe@mhb.com)

23 /s/ Tiffany Mae Cartwright  
24 By: by email authorization during COVID pandemic  
25 Tiffany Mae Cartwright, WSBA #43564  
[tiffanyc@mhb.com](mailto:tiffanyc@mhb.com)

26 705 Second Avenue, Suite 1500  
27 Seattle, WA 98104  
(206) 622-1604



# **EXHIBIT 1**

Case # K19-006846

## CRIMINAL TRESPASS WARNING

Date of issuance: JULY 4, 2019 Time: 1900

Name: HORDON, ROBIN DIRK Date of Birth: [REDACTED] /1948

### Effective Dates

From: 7/4/19 To: FOREVER / NO EXPIRATION

Location of incident: PORT OF KINGSTON

I, ROBIN DIRK HORDON understand that this warning is issued to me for the following reason(s):

PUBLIC INTOXICATION

DISTURBING THE PEACE

THREATENING PORT OF KINGSTON EMPLOYEES

I understand that I am not allowed in or upon property located at 25864 WASHINGTON BLVD NE, KINGSTON WA which is located within

Kitsap County Washington. This order is in effect for the time period listed above. I understand that should I violate this written order, I can be arrested and subsequently prosecuted for Trespass 1 R.C.W. 9A.52.070 (gross misdemeanor) or Trespass 2 R.C.W. 9A.52.080 (misdemeanor).

I have read and/or have been read this warning and understand it.

Signed REFUSED TO SIGN Date 7/4/19

Witness [Signature] #55 Date 7/4/19

Witness \_\_\_\_\_ Date \_\_\_\_\_

Distribution: WHITE - ORIGINAL  
YELLOW - FOLLOW UP  
PINK - CONTACT